

2005 Senate Bill 512

Date of enactment: **March 21, 2006**

Date of publication*: **April 4, 2006**

2005 WISCONSIN ACT 158

AN ACT *to renumber* 138.10 (6); *to renumber and amend* 138.10 (7); *to amend* 138.10 (2), 217.02 (9), 218.04 (1) (a), 221.0316 (4), 223.07 (1), 224.02, 551.63 (2), 553.26 (4m) and 553.31 (2); *to repeal and recreate* 138.09 (title); and *to create* 138.10 (15) and 220.02 (2) (g) and (h) of the statutes; **relating to:** various changes regarding the Department of Financial Institutions and persons regulated by the Department of Financial Institutions and granting rule-making authority (suggested as remedial legislation by the Department of Financial Institutions).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Financial Institutions and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 138.09 (title) of the statutes is repealed and recreated to read:

138.09 (title) Licensed lenders.

SECTION 2. 138.10 (2) of the statutes is amended to read:

138.10 (2) MAXIMUM LOAN. ~~Unless made by a person licensed under s. 138.09, a~~ A pawnbroker's loan may not exceed \$150.

SECTION 4. 138.10 (6) of the statutes is renumbered 138.10 (13).

SECTION 5. 138.10 (7) of the statutes is renumbered 138.10 (14) and amended to read:

138.10 (14) PENALTY. Any pawnbroker who shall ~~refuse~~ refuses to comply with sub. (6) ~~(13)~~ shall, ~~upon conviction, be punished by imprisonment~~ be imprisoned

in the county jail ~~for~~ not more than one year or ~~by fine~~ fined not exceeding more than \$500.

SECTION 6. 138.10 (15) of the statutes is created to read:

138.10 (15) EXCEPTION. This section does not apply to any person that is licensed under s. 138.09.

NOTE: Under current law, pawnbrokers are subject to regulation under s. 138.10, stats., which, among other things, limits loans to \$150 and caps interest rates at 3% per month. If a pawnbroker wants to charge interest rates greater than 18%, the pawnbroker must also register as a licensed lender under s. 138.09, stats. To register as a licensed lender, a pawnbroker must meet certain character and fitness, and financial responsibility requirements. In addition, the pawnbroker must meet certain record keeping and annual reporting requirements. This SECTION provides that if a pawnbroker registers as a licensed lender, the pawnbroker is exempt from the requirements of s. 138.10, stats.

SECTION 7. 217.02 (9) of the statutes is amended to read:

217.02 (9) "Seller of checks" means a person who, as a service or for a fee or other consideration, engages in the business of selling and issuing checks or the receiving of money for transmission or the transmitting of money, or the transmitting of money to foreign countries; ~~but does not include the business of a telegraph company~~

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

in receiving money for immediate transmission by telegraph.

NOTE: This SECTION deletes the exemption of telegraph companies from the definition of "seller of checks." Telegraph companies no longer exist.

SECTION 8. 218.04 (1) (a) of the statutes is amended to read:

218.04 (1) (a) "Collection agency" means any person engaging in the business of collecting or receiving for payment for others of any account, bill or other indebtedness. It shall not include attorneys at law authorized to practice in this state and resident herein, banks, express companies, state savings banks, state savings and loan associations, insurers and their agents, trust companies, ~~or professional men's associations collecting accounts for its members on a nonprofit basis, where such members are required by law to have a license, diploma or permit to practice or follow their profession,~~ real estate brokers, and real estate salespersons.

NOTE: Under current law, a person who engages in business as a collection agency must be licensed by the division of banking in the department of financial institutions (DFI) and is subject to laws that specifically regulate collection agencies. Certain "professional men's associations" that collect accounts for their members on a nonprofit basis are exempt from the definition of "collections agency." Since the term "professional men's association" is currently not defined and DFI cannot locate any such organizations, this SECTION deletes the exemption.

SECTION 9. 220.02 (2) (g) and (h) of the statutes are created to read:

220.02 (2) (g) Mortgage bankers, loan originators, and mortgage brokers under subch. III of ch. 224.

(h) Nondepository small business lenders under subch. IV of ch. 224.

NOTE: Under current law the division of banking (division) in the department of financial institutions has the specific authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses. In addition the division's general authority authorizes it to enforce all laws relating to banks and banking in this state. This SECTION specifies that the division's general authority includes the authority to regulate mortgage brokers, mortgage bankers, loan originators and certain institutions that lend to small businesses.

SECTION 10. 221.0316 (4) of the statutes is amended to read:

221.0316 (4) TRUST SERVICE OFFICES. A state bank exercising trust powers may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of any other depository institution, as defined under s. 221.0901 (2) (i). A state bank may, with the approval of the division, permit any other depository institution, as defined under s. 221.0901 (2) (i), exercising trust powers or any trust company bank organized under ch. 223 to establish and maintain a trust service office at any of its banking offices. The establishment and operation of a trust service office are subject to s. 223.07. This subsection does not authorize branch banking.

SECTION 11. 223.07 (1) of the statutes is amended to read:

223.07 (1) Any trust company bank may, with the approval of the division, establish and maintain a trust service office at any office ~~in this state~~ of a depository institution, as defined in s. 221.0901 (2) (i), if the establishment of the trust service office has been approved by the board of directors of the ~~state or national bank~~ depository institution at a meeting called for that purpose.

NOTE: Under current law, the division of banking (division) in the department of financial institutions may allow a state bank to exercise certain trust powers. In addition, the division may allow a trust company bank or a state bank exercising trust powers to offer trust services at the offices of certain other financial institutions, as long as the offices are in this state. During the 1995-1996 legislative session, the legislature amended the law to allow out-of-state depository institutions to establish a Trust Service Office at a bank or branch location in Wisconsin. This and the preceding SECTION expand the authority of the division to allow a Wisconsin state bank or trust company bank to offer trust services at the out-of-state offices of certain financial institutions.

SECTION 12. 224.02 of the statutes is amended to read:

224.02 Banking, defined. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business by any person, partnership, association, or corporation, shall be deemed to be doing a banking business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, provided that nothing herein shall apply to or include money left with an agent, pending investment in real estate or securities for or on account of the agent's principal. ~~Provided, however, that if money so left with an agent for investment shall not be kept in a separate trust fund or if the agent receiving such money shall mingle same with the agent's own property, whether with or without the consent of the principal, or shall make an agreement to pay any certain rate of interest thereon or any agreement to pay interest thereon other than an agreement to account for the actual income which may be derived from such money while held pending investment, the person receiving such money shall be deemed to be in the banking business.~~

NOTE: This SECTION exempts from the definition of "business of banking" agents who receive and hold money pending investment in real estate or securities on behalf of the person who deposits the money. Under current law such an agent would only be exempt if the agent kept the money in a separate trust fund, did not mingle the money with the agent's own property, and did not agree to pay interest on the money. This SECTION exempts such agents regardless of whether they pay interest or whether the money is kept separate. According to the Department of Financial Institutions, the amendment provides a clear exemption from the definition and will allow "agents for investments" to pay interest on free credit balances for their clients.

SECTION 13. 551.63 (2) of the statutes is amended to read:

551.63 (2) ~~No~~ Except as provided under s. 551.34 (1m) (b) and (c), no rule, form or order may be made, amended or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. In prescribing rules and forms the division may cooperate with the securities administrators of other states and the securities and exchange commission with a view to achieving maximum uniformity in the form and content of registration statements, notice filings, applications and reports wherever practicable.

NOTE: The current standard in s. 551.63 (2), stats., for actions of the division of securities prohibits rules, forms, or orders from being made, amended, or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. However, current s. 551.34 (1m) (b) and (c), stats., require action when a licensee fails to pay court-ordered child support or is liable for delinquent taxes.

This SECTION amends s. 551.63 (2), stats., to exclude the actions required for child support enforcement and delinquent taxes from the general standard used for division actions.

SECTION 14. 553.26 (4m) of the statutes is amended to read:

553.26 (4m) A person who has complied with sub. (1) need not file with the division, during the period when the registration is effective, any more information, including any amendments to the offering circular other than an application or amendment required to be filed under s. 553.31. The division may not require changes in the offering circular filed by the franchisor, subject to the division's authority to suspend or revoke a registration for any of the causes under s. 553.28.

NOTE: This SECTION results from 1995 Wisconsin Act 364. The legislation, introduced as 1995 Assembly Bill 782, would have repealed s. 553.31, stats., which requires a fran-

chise registrant to file material amendments to its uniform franchise offering circular. Assembly Amendment 4 to Assembly Bill 782 deleted the proposed repeal of s. 553.31. However, the amendment did not include the necessary changes to s. 553.26 (4m), stats., to remove inconsistent language and to clarify that the amendments required under s. 553.31, stats., must still be filed with the division of securities in the department of financial institutions. This SECTION makes those changes.

SECTION 15. 553.31 (2) of the statutes is amended to read:

553.31 (2) ~~An amendment to an application filed after the effective date of the registration of the sale of franchises, if the amendment is approved by the division, is effective on the date the division determines, having due regard for the public interest or the protection of franchisees is effective upon receipt of the amendment by the division.~~

NOTE: This SECTION amends s. 553.31 (2), stats., to clarify that any amendment that is filed with the division of securities after the effective date of a registration of the sale of a franchise is effective upon receipt of the amendment by the division. The current statute is ambiguous as to whether it applies to any amendment filed after an effective registration or only to an amendment to an *application* that was filed after an effective registration.

SECTION 16. Initial applicability.

(1) The treatment of section 138.10 (2) and (15) of the statutes first applies to any person conducting business as a pawnbroker on the effective date of this subsection.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows:

(1) PAWNBROKERS. The treatment of section 138.10 (2), (6), (7), and (15) of the statutes and SECTION 16 (1) of this act take effect on the first day of the 6th month beginning after publication.